IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE SEVENTH DAY OF APRIL
TWO THOUSAND AND TEN

PRESENT:

THE HON'BLE SRI JUSTICE B. SESHASAYANA REDDY

COMPANY APPLICATION No.924 of 2002

Between:

M/s.The Commercial Development Corporation (in Prov. Liqn) rep. by the Official Liquidator, High Court of Andhra Pradesh, Hyderabad.

... APPLICANT

a n d

Sri M. Sudhakar and another

… **RESPONDENTS**

ORDER:

This application has been taken out by the Official Liquidator on behalf of the Commercial Development Corporation (in liquidation) under Sections 446 (2) and 583 of the Companies Act, 1956 read with Rule 9 and 11 (b) of the Companies (Court) Rules, 1959 seeking a decree against respondents jointly and severally for a sum of Rs.1,26,260/ (Rupees one lakh twenty six thousands two hundred and sixty only) along with interest @ 18% p.a., from 30-05-1998 till the date of realization.

2. By an order dated 26-11-1999 in Company Petition No.13 of 1999 the Official Liquidator attached to this Court was appointed as

Provisional Liquidator of M/s.The Commercial Development Corporation. Subsequently, the company was ordered to be wound up. As per the information furnished in the files of the Company under liquidation, Sri M. Sudhakar and Sri M. Bhaskar (respondent Nos.1 and 2) borrowed an amount of Rs.2,25,000/- and executed a simple mortgage deed dated 23-02-1996. Subsequently, they made a part payment of Rs.33,750/- on 23-02-1996 and Rs.1,40,000/- on 30-05-1998. The part payments came to be endorsed on the mortgage deed. As per the books of accounts of company in liquidation, the respondents are due a sum of Rs.1,26,260/- as on 30-05-1998. The Official Liquidator issued a notice on 07-04-2000 calling upon the respondent Nos.1 and 2 to pay the amount due under the mortgage deed. The notices sent to the respondents returned un-served with an endorsement "Addressee not in town more than 7 days hence returned to sender". Hence, this application by the Official Liquidator seeking a decree for Rs.1,26,260/- along with interest at 18% p.a., from 30-05-1998 basing on the mortgage deed dated 23-02-1996.

3. Notice came to be ordered to the respondents on 21-11-2002. The respondents entered appearance and filed counter. The respondents admitted borrowing of amount for the Company in liquidation and execution of a mortgage deed dated 23-02-1996. They pleaded that an amount of Rs.1,25,500/- has been paid on 23-11-1998 towards discharge of the mortgage debt and thus, they are not liable to pay any further amount.

4. On behalf of the applicant, PW-1 was examined and Exs.A-1 to A-12 were marked. On behalf of the respondents three witnesses were examined as RWs.1 to 3 and one document was marked as Ex.B-1.

5. While so, the respondents came forward to pay Rs.1,26,260/- towards full and final discharge of the claim of the applicant. The respondents sought for waiver of interest. The learned counsel for the

respondents submits that the respondents without having any knowledge of the appointment of the Official Liquidator as Provisional Liquidator paid the money to Sri B. Sreeramaiah Chetty, Managing Partner of the company in liquidation and therefore, the respondents deserve for waiver of interest. The learned counsel refers the evidence of RWs.2 and 3 who supported the version of RW-1 with regard to payment of Rs.1,25,550/-.

6. A fact remains that as the company was ordered to be wound up as on 26-11-1999 and Official Liquidator came to be appointed as its Provisional Liquidator. The company accounts do not speak of the alleged payment and Rs.1,25,550/- on 23-11-1998. Therefore, any payment made to Sri B. Sreeramaiah Chetty cannot be taken into consideration.

7. In the given facts and circumstances, it is a fit case to consider waiver of interest. The respondent Nos.1 and 2 paid Rs.1,25,500/- (Rupees one lakh twenty five thousands and five hundred only) by way of Demand Draft vide receipt No.6344 dated 07-04-2010, cash of Rs.760/- + Rs.2,025/- (Rupees seven hundred and sixty only) and (Rupees two thousand and twenty five only) towards advertisement expenditure vide receipt Nos.6345 and 6346.

8. In that view of the matter, I deem it appropriate to waive the interest portion.

9. Accordingly, the application is dismissed as debt has been fully discharged.

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B. SESHASAYANA REDDY, J

APPENDIX OF EVIDENCE

WINESSES EXAMINED ON BEHALF OF APPLICANT

PW-1 Sri R. Rama Krishna Reddy

WINESSES EXAMINED ON BEHALF OF RESPONDENTS

RW-1	Sri M. Bhaskar
RW-2	Sri M. Subrahmanyam
RW-3	Sri M. Chandra Sekhara Reddy

EXHIBITS MARKED ON BEHALF OF APPLICANT

Ex.A-1	Mortgage deed dated 24-02-1996 executed by the respondents written in Telugu
Ex.A-2	Letter No.80-A1/2002, dated 30-07-2002 of the Department of Translation, Hyderabad along with duly translated in English version of Deed of Mortgage (original)
Ex.A-3	Endorsement of the respondents herein dated 30-05-1998 made on the back side of the Mortgage deed while paying Rs.1,40,000/- towards partial discharge of principal and interest amount on dated 30-05-1998 (original)
Ex.A-4	Loan application of Sri M. Sudhakar and Sri M. Bhaskar respondents herein dated 23-02-1996 for Rs.2,25,000/- (original)
Ex.A-5	Pro-note dated 23-02-1996, executed by the respondents herein for an amount of Rs.2,25,000/- (original)
Ex.A-6	Acknowledgment of the respondents herein for the due amount vide endorsement dated 23-02-1996 while paying an amount of Rs.33,750/- towards interest for the period from 23-02-1996 to 21-08-1996 (Original)
Ex.A-7	Receipt dated 23-02-1996 signed by the respondents herein towards the receipt of cheque No.027838 dated 23-02-1996 for Rs.2,25,000/- (Original)
Ex.A-8	Statement of Loan Account (Original)
Ex.A-9	Copy of the List of Loan Accounts of List of Debtors (True Copy)
Ex.A-10	Notice dated 7-4-2000 issued by the Official Liquidator (True Copy)
Ex.A-11	Return cover received from respondent No.1 and 2 (True Copy)
Ex.A-12	Certified true copy of publication of Notice to respondent Nos.1 and 2 herein in Vaartha Telugu Daily Newspaper, Madanapalle edition on 25-01-2003.

EXHIBITS MARKED ON BEHALF OF RESPONDENTS

Ex.B-1	Original receipt issued by Sri B. Sreeramaiah Chetty, the Managing Partner of applicant company

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B. SESHASAYANA REDDY, J

April 07, 2010.

PN

THE HON'BLE SRI JUSTICE B. SESHASAYANA REDDY

COMPANY APPLICATION No.924 of 2002

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